

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Douglas Johnson on behalf of himself and
all others similarly situated,

Plaintiff,

v.

Buffalo Wild Wings, Inc. a/k/a Buffalo
Wild Wings Bar & Grill,

Defendant.

Court File No. 11-CV-1267 (PAM/TNL)

DEFENDANT'S MOTION TO
DISMISS

Pursuant to Fed. R. Civ. P. 56 and 12(b)(6), Defendant Buffalo Wild Wings, Inc. a/k/a Buffalo Wild Wings Bar & Grill, hereby moves this Court for an Order dismissing the Complaint with prejudice. The basis for this motion is that Plaintiff has failed to state a claim upon which relief can be granted because Plaintiff does not allege Defendant is either an ATM operator or that Defendant imposed a fee upon Plaintiff, both of which are essential elements of Plaintiff's claim brought pursuant to 15 U.S.C. § 1693b(d)(3). Further, Plaintiff's alleged class allegations are unsustainable. Moreover, Plaintiff's pleading deficiencies cannot be cured by an Amended Complaint.

This motion is made pursuant to the Federal Rules of Civil Procedure and is based upon all the files, records, and pleadings on file with the Court, as well as the memorandum of law and supporting documents that will be filed in accordance with the Local Rules.

Dated: June 22, 2011

BRIGGS AND MORGAN, P.A.

By: s/ Amie E. Penny

Timothy G. Gelinske (#0267764)

Molly B. Thornton (#0331922)

Amie E. Penny (#0389874)

2200 IDS Center

80 South Eighth Street

Minneapolis, Minnesota 55402-2157

(612) 977-8400

ATTORNEYS FOR DEFENDANT
BUFFALO WILD WINGS, INC. A/K/A
BUFFALO WILD WINGS BAR &
GRILL